

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 12-057**

**AN ORDINANCE TO AUTHORIZE AN AGREEMENT FOR ETHERNET  
NETWORK SERVICE BETWEEN COMCAST AND THE CITY OF  
WILMINGTON.**

Rev.#1  
#3721

Sponsors:

Council  
President  
Griffiths

Council  
Member  
Kelley

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for more than a period of one year if approved by City Council by ordinance; and

**WHEREAS**, the City of Wilmington desires to enter into an Agreement for ethernet network services with Comcast for a five (5) year period pursuant to the form of agreement attached hereto as Exhibit "A" (the "Agreement").

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The Agreement for Ethernet Network Services between Comcast and the City of Wilmington, for a five (5) year period, pursuant to the form of contract attached hereto as Exhibit "A", is hereby approved, and the Director of the Division of Integrated Technologies is hereby authorized and directed to execute such documents as may be necessary to effectuate such extension.

**SECTION 2.** This substitute ordinance shall be deemed effective upon its date of passage by City Council and approval of the Mayor.

First Reading. . . . .September 20, 2012  
Second Reading. . . .September 20, 2012  
Third Reading. . . .November 1, 2012

Passed by City Council,  
November 1, 2012

  
President of City Council  
11/1/12

ATTEST: Mariabel Seijo  
City Clerk

Approved as to form this  
26 day of October, 2012

[Signature]  
Senior Assistant City Solicitor

Approved this 2nd day of Nov, 2012

[Signature]  
Mayor

**SYNOPSIS:** This substitute ordinance authorizes the City to enter into an agreement for a five (5) year period for ethernet network services provided by Comcast.

## Comcast Business Communications, LLC Network Services Agreement

This Agreement ("Agreement") is made on the 1<sup>st</sup> day of November, 2012 ("Effective Date") by and between Comcast Business Communications, LLC ("Company" or "Comcast"), a Delaware limited liability company, with offices located at One Comcast Center, Philadelphia, PA 19103 and City of Wilmington, Delaware ("Customer"), with offices located at 800 N. French Street Wilmington, DE 19801. Herein, the above shall be collectively referred to as the "Parties" and individually as "Party".

Description of Services to be provided by Company to Customer: 1000 Mbps [basic bandwidth] Ethernet Network Services ("ENS") at the Customer sites set forth in the Schedules (also referred to as Sales Order Form(s)) attached hereto.	
Term of Agreement (months): Sixty (60)	Agreement Number: DE-13452-110112-01
Non-Recurring Charges ("NRC"): \$0.00	Monthly Recurring Charges ("MRC"): \$15,000.00
Any Additional Charges/Explanation:	
Number of Sites: Thirteen (13)	Estimated Service Date: Ninety (90) to one-hundred twenty (120) days after mutual execution of Agreement.
Notes / Comments: Modifications made to the terms and conditions of the Agreement are set forth in the First Amendment attached hereto. Schedules A-1 and A-2 attached hereto and incorporated herein by this reference.	
Sales Person: David Cava	Telephone Number: (484) 464-8630
General Manager: Eric Wanzer	Telephone Number: (609) 306-0615
Customer Contact: Michael Witkowski	Telephone Number: (302) 576-3853

This Network Services Agreement sets forth the terms and conditions under which Comcast Business Communications, LLC and its operating affiliates ("Comcast") will provide the Services identified above to Customer. This Comcast Network Services Agreement consists of this document ("Cover Page"), the standard Comcast Business Communications, LLC General Terms and Conditions ("General Terms and Conditions"), and Schedules A and B ("Schedules"), and any jointly executed amendments ("Amendments"), collectively referred to as the "Agreement". In the event of any inconsistency among these documents, precedence will be as follows: (1) Amendments, (2) General Terms and Conditions, (3) this Cover Page, and (4) Schedules. This Agreement shall commence and become a legally binding agreement upon Customer's execution of this Cover Page. The Agreement shall terminate as set forth in the General Terms and Conditions. All capitalized terms not defined on this Cover Page shall have the definitions given to them in the General Terms and Conditions.

All modifications to the Agreement, if any, must be captured in a written Amendment, executed by an authorized Comcast Vice President and the Customer. All other attempts to modify the Agreement shall be void and non-binding on Comcast.

Customer, by signing below, agrees and accepts the terms and conditions of this Agreement.

**City of Wilmington, Delaware**

**Comcast Business Communications, LLC**

Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

**COMCAST BUSINESS COMMUNICATIONS, LLC  
GENERAL TERMS AND CONDITIONS**

**SECTION 1 - SCOPE OF SERVICE**

1.1 Company will provide to Customer the Service at the prices set forth in the attached Schedule A, and to the location(s) set forth in Schedule B, both attached hereto ("Buildings"). The Service is provisioned by utilizing fiber optic cable, associated with electronics and other equipment ("Network"), which transports and distributes digital signals in a standards based Internet Protocol (IP) format for standards based IP applications to Customer's Buildings identified in the attached Schedule B and at the transmission level designated in Schedule A attached hereto. The Network is provisioned into Customer's Building at the point of interconnection between the Network and Customer's provided equipment located at Customer's Building ("Demarcation Point").

1.2 The Service does not include connection to the public switched network, building wire, any Local Area Networks ("LANs"), Customer Premise Equipment ("CPE"), IP addressing capability, firewalls or any other equipment, electronics, or wiring required on the Customer's side of the Demarcation Point.

1.3 Upon the request of Customer, Company will consider providing other services to Customer at terms, conditions, and prices to be mutually agreed upon in writing between the Parties.

**SECTION 2 - INSTALLATION OF NETWORK**

2.1 Customer, at no cost to Company, shall secure throughout the term of Service any easements, leases or other agreements necessary to allow Company to use existing pathways into and in each Building to the Demarcation Point for the Service.

2.2 Subject to the terms of this Agreement, and at no cost to Company, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Network used to provision the Service within each Building.

2.3 Company and its employees, agents, lessees, officers and its authorized vendors will require free ingress and egress into and out of the Buildings in connection with the provision of Services. Upon reasonable notice from Company, Customer shall assist Company in accessing each Building.

2.4 If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify Company to install the applicable portion of the Network in areas of any such Building not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.

2.5 Company shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.

2.6 Customer shall be responsible for providing maintenance, repair, operation and replacement of all wire, cable facilities on the Customer's side of the Demarcation Point. Any CPE and wiring that Customer uses in connection with the Service shall be compatible with the Network.

2.7 Customer shall use reasonable efforts to maintain its property and Buildings in a manner that preserves the integrity of the Service and shall promptly notify Company of any event that affects such integrity including but not limited to damage to the Network.

2.8 At such time as Company completes installation and connection of the necessary facilities and equipment to provide the Service, Company shall then notify Customer in writing that the Service is available for use and the date of such notice shall be the "Service Date". The current notice form is called the Billing Information Form ("Billing Form"). Company may update, modify or replace the service notification form from time to time without notice to Customer.

2.9 Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that would otherwise be available for use.

2.10 **Customer-Provided Equipment (CPE).** Company shall have no obligation to install, operate, or maintain CPE. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customer's side of the Demarcation Point. All CPE and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Company's employees or authorized contractors when the difficulty or trouble report results from CPE.

**SECTION 3 - OWNERSHIP, IMPAIRMENT, AND REMOVAL OF THE NETWORK**

3.1 The Network is and shall remain the property of Company regardless of whether installed between, within or upon the Buildings and whether installed overhead, above, or underground and shall not be considered a fixture or an addition to the land or the Buildings located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Company's title to the Network, or exposes Company to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in this Agreement shall preclude the Company from using the Network for services provided to other Company customers.

3.2 For a period of twelve (12) months following Company's discontinuance of Service to the Buildings, Company retains the right to remove the Network including, but not limited to, that portion of the Network that is located in the Buildings. To the extent Company removes such portion of the Network, it shall be responsible for returning the Buildings to their prior condition, reasonable wear and tear excepted.

**SECTION 4 - COMPENSATION; PAYMENT**

4.1 The Non-Recurring Charges ("Non-Recurring Charges" or "NRC") and Monthly Recurring Charges ("Monthly Recurring Charges" or "MRC") for the Service is set forth in the attached Schedule A and on the first page of the Agreement. Upon installation of Services, Company shall immediately invoice Customer for the NRC and Customer shall pay Company one hundred percent (100%) of the NRC. Unless otherwise stated in this Agreement, Company will invoice Customer in advance on a monthly basis for all Monthly Recurring Charges arising under the Agreement. Payment will be considered timely made to Company if received within thirty (30) days after the invoice date set forth in the invoice. Any charges not paid to Company within such period will be considered past due. In the event the Service Date is not the first day of the billing period, the first Recurring Charge shall also include the *pro rated* in arrears charges for Services from date of installation to the date of first billing.

4.2 Any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower.

4.3 Except for taxes based on Company's net income, and except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable local, state, and federal taxes (however designated) levied upon the sale, installation, use or provision of Service. Further, Company reserves the right to invoice Customer for the costs of any fees or payment obligations stemming from an order, rule, or regulation of the FCC, a public service commission or a court of competent jurisdiction with respect to the Services, including, without limitation, universal service fund charges, or as otherwise needed to recover amounts that Company is required by government or quasi-governmental authorities to collect from or to pay to others in support of statutory or regulatory programs, including, without limitation, franchise fees and right-of-way fees. It will be the responsibility of Customer to pay any such taxes and fees that subsequently become applicable retroactively.

4.4 In the event that any newly adopted law, rule, regulation, or judgment increases Company's costs of providing Services, Customer shall pay Company's additional costs of providing Services under the new law, rule, regulation or judgment.

#### SECTION 5 - TERM

Unless sooner terminated as provided herein, the Term of this Agreement shall be for sixty (60) months from the Service Date ("Term"). In the case of multiple Service Dates, the Term shall be sixty (60) months from the last Service Date. Upon the expiration of the Term, this Agreement shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)"), unless prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Effective at any time after the end of the initial Service Term and from time to time therein, Company may modify the charges for the Services to reflect then-current prevailing pricing subject to thirty (30) days prior notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing for the remainder of the Renewal Term.

#### SECTION 6 - TERMINATION WITHOUT FAULT; DEFAULT

6.1 Notwithstanding any other term or provision in this Agreement, Customer shall have the right, in its sole discretion, to terminate this Agreement at any time during the Term, or any Renewal Term, upon (i) sixty (60) days prior written notice to Company and (ii) the payment of 100% of the remaining Monthly Recurring Charges ("Termination Charges") payable to Company within ten (10) days following termination of the Agreement ("Termination Charges").

6.2 (a) Company may, in its sole discretion, immediately terminate this Agreement in the event that it is unable to provide Service due to any law, rule, regulation, Force Majeure event, or judgment of any court or government agency. If Company terminates the agreement under this subsection 6.2(a), Customer shall have no obligation to pay any remaining Monthly Recurring Charges as a result of Termination by the Company, with the exception of any past due amounts.

(b) Any breach of Article 9A shall be deemed a material breach of this Agreement. In the event of such material breach, Company shall have the right to restrict, suspend, or terminate

immediately any or all Service, without liability on the part of Company, and then to notify Customer of the action that Company has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement. In the event Company terminates service under this subsection 6.2(b), Customer shall be responsible for the payment of all past due amounts and Termination Charges in addition to any other remedies as identified in section 6.4.

6.3 In the event of default, either Party may terminate this Agreement. A "default" exists under this Agreement upon the following events:

(i) either Party's failure to meet or perform any material term, provision, covenant, agreement, or obligation contained in this Agreement; provided that the non-defaulting Party so advises the defaulting Party in writing of the event of default and the defaulting Party does not remedy the default within thirty (30) days after written notice thereof; or

(ii) either Party's insolvency or initiation of bankruptcy or receivership proceedings by or against the Party.

(iii) Customer is in breach of a payment obligation and fails to make payment in full within ten (10) days after receipt of written notice of default.

6.4 The non-defaulting Party shall be entitled to all available legal and equitable remedies for such breach.

6.5 In addition to the remedies set forth in Section 6.4 above; Company shall be entitled to Termination Charges for any Customer Default.

#### SECTION 7 - SERVICE RESPONSE TIMES

7.1 Maintenance Service consists of the repair or replacement, at Company's option, of any portion of the Network that is malfunctioning. Company will maintain the Network twenty-four (24) hours a day, seven (7) days per week, every day of the year.

7.2 In the event that Company, in responding to a Customer-initiated service call, determines that the reason for such service call is due to Customer-provided equipment or Customer's actions or omissions, acts or omissions of third parties with whom Customer has any type of relationship, Customer shall compensate Company for Company's costs of such service call at the rate of \$50.00 per half hour and \$150.00 per truck roll charge.

#### SECTION 8 - LIMITATIONS ON WARRANTIES AND LIABILITY

8.1 COMPANY WILL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT WILL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT.

8.2 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**8.3** Company's liability for mistakes, errors, omissions, interruptions, delays, outages, or defects in transmission or switching of any Service (individually or collectively, "Liability"), excluding any Liability caused by force majeure events or Customer actions, omission or equipment, shall be limited solely to 1/30<sup>th</sup> of the Monthly Recurring Charge, for the affected portion of the Service, for one or more Liabilities of at least two (2) hours in duration in any 24-hour period that is not coincident with any other Liability, ("Credit"), provided that the Liability is reported by Customer during the duration of the Liability.

**8.4** Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the Service including, but not limited to, the inability of a supplier to provide equipment in a timely manner for Network, or for damages associated with services, facilities, or equipment which it does not furnish, including, but not limited to, damages which result from the operation of Customer's system, equipment or facilities. In no event shall Company, its affiliates, its/their employees agents, contractors, merchants, or licensors be liable for any loss, damage or claim arising out of or related to: (1) stored, transmitted, or recorded data, files, or software. (i.e., Customer is advised to back up all data, files and software prior to the installation of service and at regular intervals thereafter); (2) interoperability, interaction or interconnection of the Service provided under this Agreement with applications, equipment, services or networks provided by Customer or third parties.

**8.5** Neither Customer nor its agents or independent contractors shall offer third parties warranties or representations for the Service which would obligate or otherwise bind Company beyond any warranty or representation expressly set forth in this Agreement.

**8.6** Customer is prohibited from reselling Company-provided Services in any way. Customer, its employees, agents and independent contractors shall not use the Network to provide any product or Service that directly or indirectly competes with any product or Services provided by the Company (Non-Compete).

#### SECTION 9 - INDEMNIFICATION

**9.1** Subject to Section 8, each Party ("Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party"), its affiliates, officers, directors, employees, stockholders, partners, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts (collectively, "Damages"), arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") relating to:

(i) Any Claim of any third party resulting from the gross negligence or willful act or omission of Indemnifying Party arising out of or related to this Agreement, the obligations hereunder, and uses of Services; and

(ii) Any violation of this Agreement by the Indemnifying Party or any violation of any law, rule, regulation, or order of any governmental authority having jurisdiction over any aspect hereof, or in violation of any patent, right, license, agreement, or certificate relating to the subject matter hereof.

**9.2** The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of this Section 9. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The

Indemnifying Party shall assume the defense of any Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

#### SECTION 9A - USE POLICIES

**9A.1** Customer agrees to ensure that all uses of the Services installed at its premises ("use") are legal and appropriate. Specifically, Customer agrees to ensure that all uses by Customer or by any other person ("user"), whether authorized by Customer or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Company reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Company (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Company's ability to provide the Services to Customer or others, or (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent Customer purchases Internet bandwidth services, such Services shall be subject to Company's Acceptable Use Policies ("AUP") that may limit use. The AUP and other policies concerning the Services are posted <http://www.comcast.com/business> or on another web site about which Customer has been notified, and are incorporated to this Agreement by reference. Company may update the use policies from time to time, and such updates shall be deemed effective seven (7) days after the update is posted online, with or without actual notice to Customer. Accordingly, Customer should check the above web addresses (or the applicable successor URLs) on a regular basis to ensure that its activities conform to the most current version of the use policies. Company's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information.

**9A.2** Violation. Any breach of this Article 9A shall be deemed a material breach of this Agreement. In the event of such material breach, Company shall have the right to restrict, suspend, or terminate immediately any or all Service, without liability on the part of Company, and then to notify Customer of the action that Company has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

#### SECTION 10 - INSURANCE

**10.1** Company shall maintain during the Initial Term or any Renewal Term commercial general liability insurance that covers its liability and obligations hereunder including premises operations, broad-form property damage, personal injury hazards and contractual liability.

**10.2** Customer shall maintain during the Initial Term or any Renewal Term commercial general liability insurance that covers its liability and obligations hereunder including premises operations, broad-form property damage (including, if appropriate, flood damage), personal injury hazards and contractual liability.

**10.3** The liability limits under these policies shall be one million (\$1,000,000) dollars per occurrence, with a combined single limit for bodily injury and property damage liability.

## SECTION 11 - ASSIGNMENT

**11.1** Neither Party shall assign any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. The foregoing notwithstanding, Company may assign this Agreement to any affiliate, related entity, or successor in interest without Customer's consent. In addition, Company may partially assign its rights and obligations hereunder to any party which acquires from Company all or substantially all of the assets of cable franchise(s) in which the Service is deployed to Customer.

**11.2** All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

## SECTION 12 - FORCE MAJEURE

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, act of terrorism, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

## SECTION 13 - SEVERABILITY

In the event that any one or more of the provisions in this Agreement shall for any reason be held invalid, unenforceable, or void in any respect under the laws of the jurisdiction governing the entire Agreement, such provision(s) shall be construed so as to render it enforceable and effective to the maximum extent possible in order to effectuate the intention of this Agreement; and the validity, legality, and enforceability of the remaining provisions hereof shall not be affected or impaired.

## SECTION 14 - THIRD-PARTY BENEFICIARIES

No provision in this Agreement is intended, nor shall any be interpreted, to provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action or create any other third party beneficiary rights against Company.

## SECTION 15 - INDEPENDENT CONTRACTORS

**15.1** The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

**15.2** The requirements of this Article shall survive the expiration, termination, or cancellation of this Agreement to the greatest extent permitted by law.

## SECTION 16 - NONDISCLOSURE

**16.1** Unless prior written consent is obtained from a Party hereto, the other Party will keep in strictest confidence all information identified by the first Party as confidential, or which, from the circumstances, in good faith and in good conscience, should be treated as confidential; provided that (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily

ascertainable through proper means by the public. Such information includes but is not limited to all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A Party shall be excused from these nondisclosure provisions if the information has been, or is subsequently, made public by the disclosing Party, is independently developed by the other Party, if the disclosing Party gives its express, prior written consent to the public disclosure of the information, or if the disclosure is required by any law or governmental or quasi-governmental rule or regulation.

**16.2** Customer shall not disclose to third parties the rates, terms, or conditions of this Agreement or any proprietary or confidential information of the Company, except as necessary for the operation of Customer's business and under non-disclosure agreement between Customer and third parties, or as required by law.

## SECTION 16A - CUSTOMER PRIVACY POLICIES

**16A.1** In addition to the provisions of Article 16, the privacy policy below applies to Company's handling of Customer confidential information. In the event of a conflict between the provisions of Article 16 and any provision of the privacy policy below, the applicable provision of the privacy policy shall prevail in the resolution of the conflict. A copy of Company's privacy policy is available at <http://www.comcast.com/customerprivacy/>. Company may update this policy from time to time, and such updates shall be deemed effective upon posting.

**16A.2 Privacy Note Regarding Information Provided to Third Parties:** Company is not responsible for any information provided by Customer to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy policies. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

## SECTION 17 - NOTICES

**17.1** Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, or overnight courier, or via U.S. Certified Mail, Return Receipt Requested, at the following addresses:

### To Customer:

Attn: Director of Integrated Technologies  
City of Wilmington, Delaware  
800 N. French Street  
Wilmington, DE 19801

### To Company:

Attn.: VP - Business Services  
Comcast Business Communications, LLC.  
One Comcast Center  
Philadelphia, PA 19103

### With a copy to:

Attn.: Cable Law Department  
Comcast Cable Communications, LLC.  
One Comcast Center  
Philadelphia, PA 19103

## **SECTION 18 - HEADINGS AND TITLES**

The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

## **SECTION 19 - CHOICE OF LAW**

The domestic law of the state in which the Services are provided shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

## **SECTION 20 - COMPLIANCE WITH LAWS**

Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

## **SECTION 21 - AMENDMENTS; NO WAIVER**

**21.1** This Agreement may be amended only by written agreement signed by authorized representatives of both Parties.

**21.2** No waiver of any provisions of this Agreement or to any default under this Agreement shall be effective unless the same shall be in writing and signed by or on behalf of the Party against whom such waiver is claimed.

**21.3** No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement shall be construed as a waiver of such term, right or condition.

**21.4** Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

## **SECTION 22 - SURVIVAL**

Provisions contained in this Agreement that by their sense and context are intended to survive the performance, termination or cancellation of this Agreement hereof by any Party hereto shall so survive.

## **SECTION 23 - FULLY INTEGRATED**

This writing constitutes the entire agreement between the Parties as to the subject matter hereof and supersedes and merges all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the Agreement.

## **SECTION 24 - INTERPRETATION OF AGREEMENT**

This Agreement is a negotiated document. In the event that this Agreement requires interpretation, such interpretation shall not use any rule of construction that a document is to be construed more strictly against the Party who prepared the document.

## **SECTION 25 - RIGHT TO ENTER INTO CONTRACTS**

Nothing herein shall be construed as preventing either Party hereto from entering into similar contractual arrangements with other parties, unless such contracts would conflict with the performance of this Agreement.

## **SECTION 26 - REMEDIES CUMULATIVE**

All rights of termination, or other remedies set forth in this Agreement are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by the other Party of any provision of this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing

any provision of this Agreement; provided, however, that Party shall not be entitled to retain the benefit of inconsistent remedies.

## **SECTION 27 - COUNTERPARTS**

This Agreement may be executed simultaneously in two or more counterparts, each counterpart shall be deemed an original, and all counterparts individually or together shall constitute one and the same instrument.



**FIRST AMENDMENT**  
**To**  
**Network Services Agreement No. DE-13452-110112-01**

**This First Amendment** ("Amendment") is concurrently entered into on November 1, 2012 ("Effective Date") in conjunction with Network Services Agreement No. DE-13452-110112-01 ("Agreement") by and between Comcast Business Communications, LLC ("Company") and City of Wilmington, Delaware ("Customer"), individually referred to herein as "Party" and jointly referred to as "Parties". In the event of conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question. Unless otherwise set forth herein, all capitalized terms set forth herein shall have the same meaning as set forth in the Agreement.

**Whereas**, the Parties desire to amend the Agreement by this writing to reflect the amended or additional terms and conditions to which the Parties have agreed to;

**Now, therefore**, in consideration of the mutual covenants, promises, and consideration set forth in this Amendment, the Parties agree as follows:

1. Section 2.1 of the Agreement is hereby modified to read as follows:

"Customer, at no cost to Company, shall secure throughout the term of Service any easements, leases or other agreements necessary to allow Company to use existing pathways from public rights of way into and in each Building to the Demarcation Point for the Service. To the extent possible, Comcast agrees that it shall work in good-faith with Customer to acquire any such required access for the Services."

2. Section 2.8 of the Agreement is hereby modified to read as follows:

"Upon Company's completion of the installation and connection of the necessary facilities and equipment to provide the Services at a Building, Company shall then notify Customer in writing that the Service is available for use and the date of such notice shall be the "Service Date" at the Building. The current notice form is called the Billing Information Form ("Billing Form"). Company may update, modify or replace the service notification form from time to time without notice to Customer."

3. Section 5 of the Agreement is hereby modified to read as follows:

"Unless sooner terminated as provided herein, the Term of this Agreement shall be for sixty (60) months from the Service Date ("Term"). In the case of multiple Service Dates, the Term shall be sixty (60) months from the last Service Date. Upon the expiration of the Term, this Agreement shall automatically renew for successive periods of one (1) month each, unless prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the Service Term or the then current Renewal Term. Additionally, upon thirty (30) days written notice to Company, Customer may renew this Agreement (as long as the Services and Building(s) locations remain unchanged or are previously modified by mutual agreement pursuant to Section 29) at the same rates and terms set forth herein (as modified by Section 29, if relevant) for an additional eighty-four (84) subsequent months ("Renewal Term"). In the event Service additions and/or changes are requested by Customer, Customer will be responsible for any additional costs of such Services and/or construction costs associated with providing such Services. At any time after the end of the initial Term, and, if exercised, the Renewal Term, Company may modify the charges for the Services to reflect then-current prevailing pricing subject to thirty (30) days prior notice to Customer. Customer will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Customer fail to cancel within this timeframe, Customer will be deemed to have accepted the modified Service pricing for the remainder of the Renewal Term."

4. Section 6.2 (b) of the Agreement is hereby modified to read as follows:

"b) Any breach of Section 9A shall be deemed a material breach of this Agreement. In the event of such material breach, Company shall have the right to restrict, suspend, or terminate immediately any or all Service, without liability on the part of Company, and then to notify Customer of the action that Company has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement. In the event Company terminates service under this subsection 6.2(b), Customer shall be responsible for the payment of all past due amounts and Termination Charges in addition to any other remedies as identified in section 6.4."

5. Section 8.1 of the Agreement is hereby modified to read as follows:

"COMPANY WILL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT WILL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT AS SET FORTH IN SCHEDULE A-2 ATTACHED HERETO."

6. Section 8.3 of the Agreement is hereby deleted in its entirety and shall be "RESERVED".

7. Section 9A.1 of the Agreement is hereby modified to read as follows:

"Customer agrees to ensure that all uses of the Services installed at its premises ("use") are legal and appropriate. Specifically, Customer agrees to ensure that all uses by Customer or by any other person ("user"), whether authorized by Customer or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Company reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or users, if Company (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Company's ability to provide the Services to Customer or others, or (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use. Furthermore, to the extent Customer purchases Internet bandwidth services from Company, such Services shall be subject to Company's Acceptable Use Policies ("AUP") that may limit use. The AUP and other policies concerning the Services are posted <http://www.comcast.com/business> or on another web site about which Customer has been notified, and are incorporated to this Agreement by reference. Company may update the use policies from time to time, and such updates shall be deemed effective seven (7) days after the update is posted online, with or without actual notice to Customer. Accordingly, Customer should check the above web addresses (or the applicable successor URLs) on a regular basis to ensure that its activities conform to the most current version of the use policies. Company's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other users' use or information."

8. Section 10.2 of the Agreement is hereby modified to read as follows:

"Customer shall maintain during the Initial Term or any Renewal Term commercial general liability insurance that covers its liability and obligations hereunder including premises operations, broad-form property damage (including, if appropriate, flood damage), personal injury hazards and contractual liability. Customer may satisfy its obligations under this section through self-insurance."

9. Section 28 is hereby added to the Agreement to read as follows:

"Installation Timeframe. Company acknowledges that the Customer would like the Services installed over a phased installation time frame schedule ("Exhibit 1") [not to exceed nine (9) months from mutual Agreement execution]. Company shall make all commercially reasonable efforts to complete installation of any requested Services in accordance with the installation intervals requested by Customer in Exhibit 1 attached hereto. The MRC for Services shall commence as such Services become available and are used by Customer, on a pro-rated basis."

10. Section 29 is hereby added to the Agreement to read as follows:

"Additional Services and pricing. At any time during the Term or Renewal Term of the Agreement, Customer may request to add Services at additional Buildings, to change the Buildings, or to add additional connections at the Buildings. Upon request from Customer, Company shall conduct an engineering review for the requested additional Services and will determine whether and to what extent the requested Services would require the network to be extended, built or upgraded. Within thirty (30) days of such engineering review, Company shall provide Customer with a written pricing quote for the requested Services. The quote shall consist of a NRC that is no greater than the Company's direct costs caused by the additional site and connections plus a percentage markup for the Company's normal overhead related to those direct costs, and a MRC that is consistent with and no greater than the per-Building MRC under this Agreement. Customer shall have no obligation to purchase such Services. In the event the Parties mutually agree to move forward with the additional Services, the ordering of such Services shall be memorialized in the form of a mutually-executed Amendment between the Parties."

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment as of the day and year written below and the persons signing covenant and warrant that they are duly authorized to sign for and on behalf of the respective Parties. Except as otherwise modified by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

**City of Wilmington, Delaware**

**Comcast Business Communications, LLC**

Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	

Approved as to form.  
[Signature] 11/1/12  
 Sr. Asst. City Solicitor

# SCHEDULE A

## BUILDINGS, SERVICES AND PRICING

Date: 11/1/2012

13 location ENS network 1000 Mbps per location

Short Description of Service:

Term: 60 Months

### DATA NETWORK SERVICES - PAGE 1

Line	Service Element	Rate	Location A*	Location Z*	Tax Jurisdiction	Qty	Unit Pricing		Extend
							MRC	NRC	
001	Ethernet Network Interface - Gg E	1 Port	City County Building 800 N French Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
002	ENS - Basic Network Bandwidth	1000 Mbps	City County Building 800 N French Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
003	Ethernet Network Interface - Gg E	1 Port	Municipal Complex 500 Wilmington Ave	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
004	ENS - Basic Network Bandwidth	1000 Mbps	Municipal Complex 500 Wilmington Ave	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
005	Ethernet Network Interface - Gg E	1 Port	WHAC 501 N. Madison Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
006	ENS - Basic Network Bandwidth	1000 Mbps	WHAC 501 N. Madison Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
007	Ethernet Network Interface - Gg E	1 Port	Pumping Station 103 E 16th Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
008	ENS - Basic Network Bandwidth	1000 Mbps	Pumping Station 103 E 16th Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
009	Ethernet Network Interface - Gg E	1 Port	Emergency Operations Center 22 S Head Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
010	ENS - Basic Network Bandwidth	1000 Mbps	Emergency Operations Center 22 S Head Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
011	Ethernet Network Interface - Gg E	1 Port	Public Safety Building 300 N Walnut Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
012	ENS - Basic Network Bandwidth	1000 Mbps	Public Safety Building 300 N Walnut Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
013	Ethernet Network Interface - Gg E	1 Port	Downtown Vision 409 N Orange Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
014	ENS - Basic Network Bandwidth	1000 Mbps	Downtown Vision 409 N Orange Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
015	Ethernet Network Interface - Gg E	1 Port	Rodney Tower Site 9th and Rodney Streets	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
016	ENS - Basic Network Bandwidth	1000 Mbps	Rodney Tower Site 9th and Rodney Streets	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
017	Ethernet Network Interface - Gg E	1 Port	Porter Water Plant 1315 Caruthers Lane	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
018	ENS - Basic Network Bandwidth	1000 Mbps	Porter Water Plant 1315 Caruthers Lane	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
019	Ethernet Network Interface - Gg E	1 Port		Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
020	ENS - Basic Network Bandwidth	1000 Mbps		Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
021	Ethernet Network Interface - Gg E	1 Port	HOSTING.COM 350 Pender Drive	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
022	ENS - Basic Network Bandwidth	1000 Mbps	HOSTING.COM 350 Pender Drive	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
023	Ethernet Network Interface - Gg E	1 Port	Fire Station 4/2200 N Tabbal Street	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
024	ENS - Basic Network Bandwidth	1000 Mbps	Fire Station 4/2200 N Tabbal Street	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
025	Ethernet Network Interface - Gg E	1 Port	Fire Station 5/ 1625 Glijin Avenue	Interstate	Interstate	1	\$281.95	\$0.00	\$281.95
026	ENS - Basic Network Bandwidth	1000 Mbps	Fire Station 5/ 1625 Glijin Avenue	Interstate	Interstate	1	\$871.89	\$0.00	\$871.89
027						1	\$0.00	\$0.00	\$0.00
028						1	\$0.00	\$0.00	\$0.00
029						1	\$0.00	\$0.00	\$0.00
030						1	\$0.00	\$0.00	\$0.00
031						1	\$0.00	\$0.00	\$0.00
032						1	\$0.00	\$0.00	\$0.00
033						1	\$0.00	\$0.00	\$0.00
034						1	\$0.00	\$0.00	\$0.00
035						1	\$0.00	\$0.00	\$0.00
* Building Location Detail Attached							PAGE 1 DATA NETWORK SERVICES SUBTOTAL:		
							PAGE 2 DATA NETWORK SERVICES SUBTOTAL:		
							PAGE 3 DATA NETWORK SERVICES SUBTOTAL:		
							\$15,000.00		

# **SCHEDULE A** **BUILDINGS, SERVICES AND PRICING**

Date: 11/1/2012

ADDITIONAL CUSTOM INSTALLATION CHARGES: \$15,000.00

CUSTOMER NAME	City of Wilmington
SIGNATURE	
PRINTED NAME	
TITLE	
DATE	

TOTAL MONTHLY RECURRING CHARGES: \$15.0

TOTAL NONRECURRING CHARGES: \$0.

Note: The prices included on this sales order do not include any local, state or federal fees, that may apply. Please refer to the Comcast Master Service Agreement for specific detail re: charges.

## SCHEDULE B - BUILDING LOCATION DETAIL

### CUSTOMER AUTHORIZATION

PRINT NAME

SIGNATURE

DATE

### BILLING LOCATION INFORMATION

Main Account / Billing Name City of Wilmington

County \_\_\_\_\_

Street Address 800 N. French Street

City Wilmington

State DE

Tax Exempt? Yes

Billing Interval: Monthly

Special Instructions: \_\_\_\_\_

Billing Contact Name: \_\_\_\_\_

Billing Contact email: \_\_\_\_\_

Billing Contact phone: \_\_\_\_\_

Billing Contact fax: \_\_\_\_\_

Billing Contact pager: \_\_\_\_\_

Network Solutions GL: \_\_\_\_\_

Cable System GL: \_\_\_\_\_

### SERVICE LOCATIONS

Site Name City Council Building

County \_\_\_\_\_

Street Address 800 N. French Street

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Site Name Municipal Complex

County \_\_\_\_\_

Street Address 500 Wilmington Ave

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Site Name WHACC

County \_\_\_\_\_

Street Address 501 N. Madison Street

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Site Name Pumping Station

County \_\_\_\_\_

Street Address 103 E 16th Street

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Site Name Emergency Operations Center

County \_\_\_\_\_

Street Address 22 S Heald Street

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Site Name Public Safety Building

County \_\_\_\_\_

Street Address 300 N Walnut Street

Floor \_\_\_\_\_

City Wilmington

State DE

Zip Code 19801

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

## SCHEDULE B - BUILDING LOCATION DETAIL

### SERVICE LOCATIONS

Site Name Downtown Visions  
County \_\_\_\_\_  
Street Address 409 N Orange Street  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code 19801

Site Name Rodney Tower Site  
County \_\_\_\_\_  
Street Address 9th and Rodney Streets  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code 19801

Site Name Porter Water Plant  
County \_\_\_\_\_  
Street Address 1319 Carruthers Lane  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code 19103

Site Name \_\_\_\_\_  
County \_\_\_\_\_  
Street Address \_\_\_\_\_  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code \_\_\_\_\_

Site Name HOSTING.COM  
County \_\_\_\_\_  
Street Address 350 Pencader Drive  
Floor \_\_\_\_\_  
City Newark  
State DE  
Zip Code 19702

Site Name Fire Station 4  
County \_\_\_\_\_  
Street Address 2200 N Tatnall Street  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code 19802

Site Name Fire Station 5  
County \_\_\_\_\_  
Street Address 1625 Gilpin Avenue  
Floor \_\_\_\_\_  
City Wilmington  
State DE  
Zip Code 19801

### CUSTOMER AUTHORIZATION

PRINT NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Technical / Local Contact: \_\_\_\_\_

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Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

Technical / Local Contact: \_\_\_\_\_

Local Contact email: \_\_\_\_\_

Local Contact phone: \_\_\_\_\_

Local Contact fax: \_\_\_\_\_

Local Contact mobile / pager: \_\_\_\_\_

**COMCAST ENTERPRISE SERVICES  
PRODUCT-SPECIFIC ATTACHMENT  
ETHERNET TRANSPORT SERVICES**

**SCHEDULE A-1  
SERVICE DESCRIPTIONS, TECHNICAL SPECIFICATIONS AND PERFORMANCE STANDARDS  
COMCAST ETHERNET TRANSPORT SERVICES**

**Ethernet Transport Version 1.2**

Comcast's Ethernet Transport Services ("Service(s)") will be provided in accordance with the service descriptions, technical specifications and performance standards set forth below:

**Definitions**

1. **Latency.** Latency, also known as Frame Delay, is defined as the maximum delay measured for a portion of successfully delivered service frames over a 30 day period.
2. **Jitter.** Jitter, also known as Frame Delay Variation, is defined as the short-term variations measured for a portion of successfully delivered service frames over a 30 day period.
3. **Packet Loss.** Packet Loss, also known as Frame Loss, is the difference between the number of service frames transmitted at the ingress UNI and the total number of service frames received at the egress UNI over a 30 day period.

**Service Descriptions**

1. **Ethernet Network Service (ENS).** ENS enables customers to connect physically distributed locations across a Metropolitan Area Network (MAN) as if they are on the same Local Area Network (LAN). The service provides VLAN transparency enabling customers to implement their own VLANs without any coordination with Comcast. ENS offers three Classes of Service (CoS): Basic, Priority, and Premium. CoS options enable customers to select the CoS that best meets their applications' performance requirements. The service is offered with 10/100Mbps, 1Gbps or 10Gbps Ethernet User-to-Network Interfaces (UNI) and is available in increments starting at 1Mbps. The ENS Service is not available over a Comcast HFC Network.
2. **Ethernet Private Line (EPL).** EPL service enables customers to connect their Customer Premises Equipment (CPE) using a lower cost Ethernet interface. EPL service enables customers to use any VLANs or Ethernet control protocol across the service without coordination with Comcast. EPL service provides one Ethernet Virtual Connection (EVC) between two customer locations. EPL offers three Classes of Service (CoS) including: Basic, Priority, and Premium. CoS options enable customers to select the CoS that best meets their applications' performance requirements. EPL service is offered with 10/100Mbps, 1Gbps, or 10 Gbps Ethernet User-to-Network Interfaces (UNI) and is available in speed increments starting at 1Mbps. The EPL Service is only available with a Basic CoS when delivered over a Comcast HFC Network.
3. **Ethernet Virtual Private Line (EVPL).** EVPL service provides an Ethernet Virtual Connection (EVC) between two customer locations similar to Ethernet Private Line service but supports the added flexibility to multiplex multiple services (EVCs) on a single UNI at a customer's hub or aggregation site. The service multiplexing capability is not available at sites served by the Comcast HFC Network. EVPL offers three Classes of Service (CoS) including: Basic, Priority, and Premium. CoS options enable customers to select the CoS that best meets their applications' performance requirements. The service is offered with 10/100Mbps, 1Gbps, or 10 Gbps Ethernet User-to-Network Interfaces (UNI) and is available in speed increments starting at 1Mbps. The EVPL Service is only available with a Basic CoS when delivered over a Comcast HFC Network.



4. **Off-Net Service Limitations.** The above categories of Service are available as Off-Net Services, with the following limitations:

- Only available with Basic CoS;
- 10Gbps Ethernet UNIs are not available with Off-Net Services;
- Service multiplexing capability is not available on Off-Net EVPL UNIs;
- When ordering 10/100Mbps Off-Net Ethernet UNIs, speed increments may only be ordered in increments of 10 Mbps, up to a maximum size of 90Mbps; when ordering 1 Gbps Off-Net Ethernet UNIs, speed increments may only be ordered in increments of 100Mbps, up to a maximum size of 900Mbps

#### **Technical Specifications and Performance Standards for Services**

1. **User-to-Network Interface.** The Services provides the bidirectional, full duplex transmission of Ethernet frames using a standard IEEE 802.3 Ethernet interface. Figure 1 provides a list of available UNI physical interfaces and their available Committed Information Rate (CIR) bandwidth increments and Committed Burst Sizes (CBS). CIR increments of less than 10 Mbps are not available in conjunction with Off-Net Services.

UNI Speed	UNI Physical Interface	CIR Increments	CBS (bytes)
10 Mbps	10BaseT	1 Mbps	25,000
100 Mbps	100BaseT	10 Mbps	250,000
1 Gbps	1000BaseT or 1000BaseSX	100 Mbps	2,500,000
10 Gbps	10GBase-SR or 10GBase-LR	1000 Mbps	25,000,000

Figure 1: Available UNI interface types and CBS values for different CIR Increments

2. **Class of Service Option.** Except as indicated below, On-Net Services offer three different classes of service. The CoS options allow for differentiated service performance levels for different types of network traffic. It is used to prioritize customer mission-critical traffic from lesser priority traffic in the network. The customer must specify a CIR for each CoS to indicate how much bandwidth should be assigned to each CoS. Figure 2 lists the service performance objectives for each CoS associated with On-Net (for distances within 250 network miles) and Off-Net Services. The Basic CoS is the only CoS available for Off-Net Services and On-Net Services delivered via the HFC Network.

Performance Objective	Class of Service (CoS)		
	Premium	Priority	Basic
<b>On-Net Services (&lt; 250 miles):</b>			
Latency (one way)	< 12ms	< 23ms	< 45ms
Jitter (one way)	< 2ms	< 23ms	< 45ms
Packet Loss (one way)	< 0.001%	< 0.01%	< 1%
Availability (On-Net Services delivered via a non-HFC Network)	> 99.99%	> 99.99%	> 99.99%
Availability (On-Net Services delivered via HFC Network)	Not Applicable	Not Applicable	> 99.9%
<b>Off-Net Services:</b>			
Availability	Not Applicable	Not Applicable	> 99.95%

**Figure 2: CoS Performance Objectives**

3. **CoS Identification and Marking.** Customer must mark all packets using 802.1p CoS values as specified in Figure 3 to ensure the service will provide the intended CoS performance objectives specified in Figure 2.

CoS	802.1p
Premium	5
Priority	2-3
Basic	0-1

**Figure 3: CoS Marking**

4. **Traffic Management.** Comcast's network traffic-policing policies restrict traffic flows to the subscribed CIR for each service class. If the customer-transmitted bandwidth rate for any CoS exceeds the subscription rate (CIR) and burst size (CBS), Comcast will discard the non-conformant packets. For packets marked with a non-conformant CoS marking, the service will transmit them using the Basic service class without altering the customer's CoS markings. Traffic management policies associated with Off-Net Services will conform to the policies enforced by the third-party service provider.
5. **Maximum Frame Size.** The service supports a Maximum Transmission Unit (MTU) packet size of 1600 bytes to support untagged or 802.1Q tagged packet sizes. Jumbo Frame sizes can be supported on an Individual Case Basis (ICB).

**COMCAST ENTERPRISE SERVICES  
PRODUCT-SPECIFIC ATTACHMENT  
ETHERNET TRANSPORT SERVICES**

**SCHEDULE A-2  
SERVICE LEVEL AGREEMENT**

**Ethernet Transport Version 1.2**

Comcast's Ethernet Transport Services is backed by the following Service Level Agreement ("SLA"):

**Definitions:**

Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Ethernet Transport Services PSA or the General Terms and Conditions.

**"Planned Service Interruption"** means any Service Interruption caused by planned work such as scheduled maintenance or planned enhancements or upgrades to the network.

**Service Outage and Credit:**

- Company's liability for any Service Outage shall be limited to the amounts set forth in the Tables below. A Service Outage is defined as the total time in a one (1) month invoice period in which Customer's connection is unable to transmit or receive data due to transport failure or does not achieve the service performance objectives for Customer's class of service as defined in Schedule A-1. Outage time is measured from the time Customer reports the Service Outage, provided that the Service Outage is reported by Customer during the duration of the Service Outage and a trouble ticket is opened; the Service Outage shall be deemed resolved upon closing of the same trouble ticket or the termination of the interruption, if sooner, less any time Company is awaiting additional information or premises testing from the Customer. Service Outage time does not include outages resulting from the following exclusions: (i) failure of any components beyond the core routers/switches maintained by Company; (ii) failure of any components Company cannot correct because Customer is inaccessible; (iii) force majeure events as set forth in the Agreement; (iv) Customer's negligence or willful misconduct or the negligence or willful misconduct of others authorized by Customer to use the data services, including without limitation, work repair or maintenance performed on Equipment located on Customer's premises by persons other than Company or Company authorized technicians; and/or (v) outages due to Scheduled Maintenance.
- In no event shall the total amount of credit issued to Customer's account on a per-month basis exceed 100% of the total MRC associated with the impacted portion of the Service set forth in the Agreement.
- Three (3) or more outages on a given circuit in any thirty (30) day period may result in service escalation and a Customer review meeting.

**TABLE 1: SLA for On-Net Services provided over a Comcast fiber-optic network**

<b>Length of Service Outage:</b>	<b>Amount of Credit:</b>
Less than 4 minutes	None
At least 4 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	50% of Total MRC
At least 16 hours but less than 24 hours	75% of Total MRC
At least 24 hours or greater	100% of Total MRC

**TABLE 2: SLA for On-Net Services provided over the HFC Network**

Length of Service Outage:	Amount of Credit:
Less than 40 minutes	None
At least 40 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	50% of Total MRC
At least 16 hours but less than 24 hours	75% of Total MRC
At least 24 hours or greater	100% of Total MRC

**TABLE 3: SLA for Off-Net Services**

Length of Service Outage:	Amount of Credit:
Less than 20 minutes	None
At least 20 minutes but less than 4 hours	5% of Total MRC
At least 4 hours but less than 8 hours	10% of Total MRC
At least 8 hours but less than 12 hours	20% of Total MRC
At least 12 hours but less than 16 hours	50% of Total MRC
At least 16 hours but less than 24 hours	75% of Total MRC
At least 24 hours or greater	100% of Total MRC

THE TOTAL CREDIT ALLOWANCES PER MONTH IS CAPPED AT 100% OF THAT MONTH'S MRC FOR THE INTERRUPTED PORTIONS OF SERVICE. SEPARATELY OCCURRING SERVICE INTERRUPTIONS ARE NOT AGGREGATED FOR THE PURPOSES OF DETERMINING CREDIT ALLOWANCES.

**On-Net Service Monitoring, Technical Support and Maintenance**

1. **Network Monitoring.** Comcast monitors On-Net Services on a 24x7x365 basis.
2. **Technical Support.** Comcast provides a toll-free trouble reporting telephone number to the Enterprise Technical Support (ETS) center that operates on a 24x7x365 basis. Comcast provides technical support for service-related inquiries. Technical support will not offer consulting or advice on issues relating to CPE or other equipment not provided by Comcast.
  - a. **Escalation.** Reported troubles are escalated within the Comcast Business Services Network Operations Center (BNOC) to meet the response/restoration interval described below (Response and Restoration Standards). Service issues are escalated within the Comcast BNOC as follows: to a Supervisor at the end of the applicable time interval plus one (1) hour; to a Manager at the end of the applicable time interval plus two (2) hours, and to a Director at the end of the applicable time interval plus four (4) hours.
  - b. **Maintenance.** Comcast's standard maintenance window for On-Net Services is Sunday to Saturday from 12:00am to 6:00am local time. Scheduled maintenance for On-Net Services is performed

during the maintenance window and will be coordinated between Comcast and the Customer. Comcast provides a minimum forty eight (48) hour notice for non-service impacting maintenance. Comcast provides a minimum of seven (7) days notice for On-Net Service impacting planned maintenance. Emergency maintenance is performed as needed without advance notice to Customer. Maintenance for Off-Net Services shall be performed in accordance with the applicable third party service provider rules. Therefore, Off-Net Service may be performed without advance notice to Customer.

3. Comcast provides certain Comcast Equipment for provisioning its services and the delivery of the UNI, which will reside on the Customer-side of the Demarcation Point. Comcast will retain ownership and management responsibility for this Comcast Equipment. This Comcast Equipment must only be used for delivering Services. Customers are required to shape their egress traffic to the Committed Information Rate ("CIR") identified in the Sales Order. Comcast will be excused from paying SLA credits if the Service Interruption is the result of Customer's failure to shape their traffic to the contracted CIR or utilizing Comcast Equipment for non-Comcast provided services.

### **Performance Standards**

"Performance Standards" are set forth in Schedule A-1 to the Product-Specific Attachment for Ethernet Service.

### **Response and Restoration Standards**

Comcast has the following response and restoration objectives:

CATEGORY	TIME INTERVAL	MEASUREMENT	REMEDIES
<i>Mean Time to Respond Telephonically to Call</i>	15 minutes	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore On-Net Comcast Equipment</i>	4 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Off-Net Equipment</i>	6 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore On-Net Services</i>	6 hours	Averaged Over A Month	Escalation (see above)
<i>Mean Time to Restore Off-Net Services</i>	9 hours	Averaged Over A Month	Escalation (see above)

Customer shall bear any expense incurred, e.g., dispatch/labor costs, where a Service Interruption is found to be the fault of Customer, its end users, agents, representatives or third-party suppliers.

### **Emergency Blocking**

The parties agree that if either party hereto, in its reasonable sole discretion, determines that an emergency action is necessary to protect its own network, the party may, after engaging in reasonable and good faith efforts to notify the other party of the need to block, block any transmission path over its network by the other party where transmissions do not meet material standard industry requirements. The parties further agree that none of their respective obligations to one another under the Agreement will be affected by any such blockage except that the party affected by such blockage will be relieved of all obligations to make payments for charges relating to the circuit(s) which is so blocked and that no party will have any obligation to the other party for any claim, judgment or liability resulting from such blockage.

### **Remedy Processes**

All claims and rights arising under this Service Level Agreement must be exercised by Customer in writing within forty-five (45) days of the event that gave rise to the claim or right. The Customer must submit the following information to the Customer's Comcast account representative with any and all claims for credit allowances: (a) Organization name; (b) Customer account number; and (c) basis of credit allowance claim (including date and time, if applicable). Comcast will

acknowledge and review all claims promptly and will inform the Customer by electronic mail or other correspondence whether a credit allowance will be issued or the claim rejected, with the reasons specified for the rejection.

#### **Exceptions to Credit Allowances**

A Service Interruption shall not qualify for the remedies set forth herein if such Service Interruption is related to, associated with, or caused by: scheduled maintenance events; Customer actions or inactions; Customer-provided power or equipment; any third party not contracted through Comcast, including, without limitation, Customer's users, third-party network providers, any power, equipment or services provided by third parties; or an event of force majeure as defined in the Agreement.

#### **Other Limitations**

The remedies set forth in this Service Level Agreement shall be Customer's sole and exclusive remedies for any Service Outage, unavailability, delay, or other degradation, or any Comcast failure to meet the service objectives.